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10/573,323

09/28/2006

Katrin Counradi

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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

EXAMINER

MRUK, BRIAN P

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/573,323
Filing Date: September 28, 2006
Appellant(s): COUNRADI ET AL.

Heribert Muensterer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 16 March 2010 appealing from the Office action mailed 17 June 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 41-71 are pending.

Claims 41-71 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

DE 19937813

Dubowoj

2-2001

AkzoNobel. "Product Overview: STRUCTURE PLUS" (March 8, 2005), Pages 1-2.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 41-71 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dubowoj, DE 19937813.

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Dubowoj, DE 19937813, discloses an aqueous hair washing composition that is gel-forming and transparent, wherein the composition contains 2.5-50% by weight of surfactants, 0.25-10% by weight of an acrylate terpolymer, and adjunct ingredients, such as visible particles (see attached English abstract translation). Specifically, note Example 1, which contains 10% by weight of a sulfosuccinate surfactant, 4% by weight of an ether sulfate surfactant, 4% by weight of an alkylglucoside, 2% by weight of sodium lauroyl glutamate, 3% by weight of an acrylate terpolymer, 2% by weight of PEG-40 hydrogenated castor oil, and adjunct ingredients, wherein the pH of the composition is 6, per the requirements of the instant invention. Also not page 5, lines 58-59, wherein Dubowoj discloses that the composition may have a pH of 5-8.5. Although Dubowoj is silent with respect to the transmission value, yield point, and tan delta of their composition, the examiner asserts that the compositions disclosed in Dubowoj would inherently meet the transmission value, yield point, and tan delta requirements of the instant invention, since the compositions disclosed in Dubowoj contain all of the required components in the amounts required in the instant claims, absent a showing otherwise. Therefore, instant claims 41-71 are anticipated by Dubowoj, DE 19937813.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

(10) Response to Argument

Applicant argues that Dubowoj, DE 19937813, does not teach or suggest in general a gel-forming acrylate copolymer thickener that is cross-linked and alkali swellable. However, the examiner respectfully disagrees. Specifically, the examiner asserts that Example 1 of Dubowoj clearly discloses a composition that contains an Ethylacrylate/Diethylaminoethylmethacrylate/C10-20-alkyl/PEG-20 itaconate Terpolymer. Furthermore, the examiner asserts that Dubowoj clearly discloses that their composition is gel forming (see page 2, line 5 of the English Translation of Dubowoj, DE 19937813), that the Ethylacrylate/Diethylaminoethylmethacrylate/C10-20-alkyl/PEG-20 itaconate Terpolymer contains polyunsaturated monomers that crosslink (i.e. thickens and form a gel), and that the attached Product Literature AkzoNobel, "STRUCTURE PLUS Product Overview", discloses that an Ethylacrylate/Diethylaminoethylmethacrylate/C10-20-alkyl/PEG-20 itaconate Terpolymer forms a thick gel, is acid swellable in the presence of cationic ingredients, and that the terpolymer thickens in the neutral region (see Page 1, Description of the attached Product Literature AkzoNobel, "STRUCTURE PLUS Product Overview"), per the requirements of the instant invention. It is also noted by the examiner that Dubowoj clearly discloses a composition that has a pH up to 8.5 (i.e. a pH that is alkaline; see page 8, lines 34-35 of the English Translation of Dubowoj, DE 19937813), that Dubowoj, DE 19937813, clearly discloses that their composition further contains 0.05-10% by weight of visible particles (see page 8, lines 14-26 of the English Translation of Dubowoj, DE 19937813), and that although Dubowoj is silent with respect to the

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transmission value, yield point, and tan delta of their composition, the examiner asserts that the compositions disclosed in Dubowoj would inherently meet the transmission value, yield point, and tan delta requirements of the instant invention, since the compositions disclosed in Dubowoj contain all of the required components in the amounts required in the instant claims, absent a showing otherwise.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Brian P Mruk/
Primary Examiner, Art Unit 1796

Conferees:

/Gregory L Mills/
Supervisory Patent Examiner, Art Unit 1700

/Harold Y Pyon/
Supervisory Patent Examiner, Art Unit 1796